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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 7000-263	
I hereby certify that this correspondence is being transmitted via facsimile on the date indicated below to: Examiner: Brenda H. Pham Art Unit: 2616 Fax Number: 571-273-8300 on _____ Signature _____ Typed or printed name _____		Application Number 10/628,167	Filed 7/28/2003
		First Named Inventor Samuel H. Christie, IV	
		Art Unit 2616	Examiner Brenda H. Pham
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 20px;"><div style="width: 45%;"><p>I am the</p><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. 45,742 Registration number _____</p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"> _____ Signature Anthony J. Josephson _____ Typed or printed name 919-238-2300 _____ Telephone number August 8, 2008 _____ Date</div></div> <p style="margin-top: 20px;">NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Samuel H. Christie, IV

Examiner: Brenda H. Pham

Serial No. 10/628,167

Art Unit: 2616

Filed: 07/28/2003

For: **MOBILITY IN A MULTI-ACCESS COMMUNICATION NETWORK**

Mail Stop AF

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The current remarks provide the succinct and focused set of arguments for which review is being requested and accompany the concurrently filed Notice of Appeal. The Appellant has enclosed a payment in the amount of \$510.00 to cover the fee associated with the Notice of Appeal. If any additional fees are required in association with this response, the Director is hereby authorized to charge them to Deposit Account 50-1732, and consider this a petition therefor.

REMARKS

Claims 1-5, 9-15, 19-25, 28-33, 34, 37, and 38 were rejected in the Final Office Action mailed May 9, 2008. Claims 6-8, 16-18, 26, 27, 35, and 36 were deemed allowable if rewritten in independent form. In view of the issues giving rise to this appeal (detailed below), the Appellant has not rewritten claims 6-8, 16-18, 26, 27, 35, and 36 in independent form.

Claims 1-5, 10-15, 20-25, 29-34, and 38 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,862,277 B2 to *Pan et al.* (hereinafter "*Pan*"). The Appellant respectfully traverses the rejection.

Prior to addressing the rejection, the Appellant provides a brief summary of an embodiment of the present invention. The present invention provides a terminal with the capability of establishing multiple communication sessions with a public network proxy through different access networks. The terminal can actively communicate with the public network proxy to control which of the multiple communication paths are active, as well as control the transition from actively using one communication path to using another. Thus, according to the

present invention, the terminal establishes multiple communication sessions and the terminal may switch between communication sessions. In one embodiment, the communication sessions are reserved tunneling sessions, and the terminal cooperates with the public network proxy to effectively control how many tunneling sessions are established, how many tunneling sessions are active at any given time, and the transition from one tunneling session to another for active communications. Furthermore, according to the present invention, after establishment of a plurality of communication sessions, the present invention selects one of the communication sessions to be an active communication session and then identifies the first active communication session to a network proxy. The Appellant submits that the cited reference does not disclose, or even suggest, that, after a plurality of communication sessions have been established, selecting one of the communication sessions and then identifying the first active communication session.

Now turning to the rejections, in order to anticipate a claim under 35 U.S.C. § 102, “the reference must teach every element of the claim.” M.P.E.P. § 2131. The Appellant submits that *Pan* does not teach every element recited in claims 1-5, 10-15, 20-25, 29-33, 35, and 38. More specifically, claim 1 recites a method for facilitating packet communications comprising, among other features, after selecting a communication session from a plurality of communication sessions, “identifying the first active communication session to the network proxy.” Claim 11 includes similar features. *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. The Patent Office maintains the rejection by stating that *Pan* discloses this feature in col. 4, ll. 65-67.¹ The Appellant respectfully disagrees. While the cited portion of *Pan* does disclose that a communication device 202 provides a SIP invite request 300 to a SIP proxy 212, this does not relate to identifying a first active communication session to a network proxy. Instead, this relates to requesting a communication session. Specifically, the SIP invite requests are being sent in an effort to establish a communication session. According to the *Pan* patent disclosure, a communication session had not been set-up yet. As such, a communication session has not been established, much less a plurality of communication sessions. Therefore, a communication session cannot be selected from a plurality of communication sessions.

¹ See Office Action mailed December 26, 2007, page 3 and Final Office Action mailed May 9, 2008, page 5.

The Patent Office responds to this line of reasoning by indicating that *Pan* discloses this feature in col. 3, ll. 35-40.² The Appellant respectfully traverses. At most, the cited portion of *Pan* discloses that the SIP proxy 212 receives the SIP invite request 300 and forwards the SIP invite request 300 to a second communication device 204.³ However, nowhere does the cited portion disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. In fact, nowhere does the cited portion disclose anything about a plurality of communication sessions, much less identifying a first active communication session from a plurality of communication sessions. Therefore, claims 1 and 11, along with claims 2, 3, 10, 12, 13, and 20, which ultimately depend from either claim 1 or claim 11, are patentable over *Pan* and the Appellant requests that the rejection be withdrawn.

Claim 21 recites a method for facilitating packet communications comprising, among other features, “receiving selection indicia from the terminal identifying one of the plurality of communication sessions to be a first active communication session.” Claim 30 includes similar features. As detailed above, *Pan* does not disclose identifying a first active communication session, which has been selected from a plurality of communication sessions. Thus, it follows that *Pan* cannot disclose receiving selection indicia from a terminal identifying one of a plurality of communication sessions to be a first active communication session. For this reason, claims 21 and 30, along with claims 23, 29, 32, and 38, which depend from either claim 21 or 30, are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 4, which ultimately depends from claim 1, recites that “packets are duplicated and sent over both the first and second active communication sessions.” Claim 14, which ultimately depends from claim 11, claim 24, which ultimately depends from claim 21, and claim 33, which ultimately depends from claim 30, include similar features. As detailed in the Response filed March 26, 2008 on page 4, *Pan* does not disclose that packets are duplicated and sent over first and second active communication sessions. In addition to the reasons noted above with respect to claims 1, 11, 21, and 30, claims 4, 14, 24, and 33 are patentable over *Pan* and the Appellant requests that the rejection be withdrawn.

Claim 5, which depends from claim 1, recites “determining a need to switch from the first active communication session.” Claim 15, which depends from claim 11, includes similar

² See Final Office Action mailed May 9, 2008, pages 3 and 4.

³ See *Pan*, col. 3, ll. 38-40.

features. *Pan* does not disclose determining a need to switch from a first active communication session, as detailed in the Response filed March 26, 2008 on page 4. Claim 5 also recites “providing indicia indicative of the need to switch from the first active communication session to the second active communication session.” Claim 15 includes similar features. *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session to a second active communication session, as detailed in the Response filed March 26, 2008 in pages 4 and 5. Thus, claims 5 and 15 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 22, which depends from claim 21, recites “receiving second selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be an active communication session.” Claim 31, which depends from claim 30, includes similar features. As outlined in the Response filed March 26, 2008 on page 5, *Pan* does not disclose receiving second selection indicia from a terminal identifying a second communication session from a plurality of communication sessions to be an active communication session. Therefore, claims 22 and 31 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claim 25, which ultimately depends from claim 21, recites “receiving switch indicia from the terminal indicating a need to switch from the first active communication session.” Claim 34, which ultimately depends from claim 30, includes similar features. As discussed in the Response filed March 26, 2008 on pages 5 and 6, *Pan* does not disclose providing indicia indicative of a need to switch from a first active communication session. Claim 25 also recites receiving “selection indicia from the terminal identifying at least a second one of the plurality of communication sessions to be a second active communication session.” Claim 34 includes similar features. As outlined in the Response filed March 26, 2008 on page 6, *Pan* does not disclose receiving selection indicia from a terminal identifying at least a second one of a plurality of communication sessions to be a second active communication session. Thus, claims 25 and 34 are patentable over the cited reference and the Appellant requests that the rejection be withdrawn.

Claims 9, 19, 28, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Pan* in view of U.S. Patent No. 7,072,657 B2 to *Watanabe et al.* (hereinafter “*Watanabe*”). The Appellant respectfully traverses the rejection. As detailed above, claims 1, 11, 21, and 30,

the base claims from which claims 9, 19, 28, and 37 respectively depend, are patentable over *Pan*. In addition, *Watanabe*, which generally pertains to reestablishing a virtual private network when a terminal moves between networks, does not overcome the previously noted fundamental deficiencies of *Pan*.⁴ Accordingly, claims 9, 19, 28, and 37 are patentable over the cited references and the Appellant requests that the rejection be withdrawn.

The present application is now in a condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact the Appellant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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⁴ See *Watanabe* at col. 6, ll. 3-40.